

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 2358

INTRODUCER: Judiciary Committee, Regulated Industries Committee, and Senator Gardiner

SUBJECT: Timeshares/Foreclosure

DATE: April 9, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Daniell</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>BI</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides a nonjudicial process for the foreclosure of liens on timeshare interests, which the bill refers to as a trustee foreclosure process. The bill creates separate but similar trustee procedures for the foreclosure of liens based on unpaid assessments and for mortgage liens. Each procedure gives the timeshare interest owner (obligor) an opportunity to object to the trustee foreclosure process and to contest the foreclosure through a judicial process. If the owner does not object to the use of the trustee foreclosure procedure, he or she will not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien.

The trustee foreclosure process for assessment liens applies to any default that gives rise to an assessment lien after the effective date of the bill. If a timeshare instrument contains a provision that prevents the use of a trustee foreclosure procedure, or if the managing entity determines that the timeshare instrument should be amended to specifically provide for the trustee foreclosure procedure, an amendment to the timeshare instrument must be adopted and recorded prior to using the trustee foreclosure procedure.

The trustee foreclosure process for mortgage liens can only be used if the mortgage, or an amendment to a mortgage executed by the obligor before the effective date of the bill, contains a notice that informs the obligor that the mortgagee (the mortgage lender) has the right to elect to use the nonjudicial or the judicial foreclosure procedure, and that if the mortgagee elects the nonjudicial procedure, the obligor (mortgagor) would have the option to object and proceed with a judicial foreclosure action.

This bill substantially amends the following sections of the Florida Statutes: 721.07, 721.13, 721.16, 721.20, 721.81, 721.82, 721.83, 721.85, and 721.86. The bill creates sections 721.855 and 721.856, Florida Statutes. The bill renames part III of chapter 721, Florida Statutes.

II. Present Situation:

Timeshares

A timeshare interest is a form of ownership of real property. The real property is typically a condominium unit or a cooperative unit. A timeshare property is typically a resort in which multiple parties hold the right to use the property. Each owner of a timeshare interest is allotted a period of time (typically one week) in which they may use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.¹ Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.² A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.³ A timeshare plan is any arrangement, plan, scheme, or similar device whereby a purchaser gives consideration for ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years.⁴

Section 721.05(34), F.S., defines a “timeshare estate” as “a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.” The term also includes an interest in a condominium unit, a cooperative unit, or a trust.

A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.⁵

¹ Section 721.02(2) and (3), F.S.

² Section 721.03, F.S.

³ See ss. 721.05(41) and 718.103(26), F.S.

⁴ Section 721.05(39), F.S.

⁵ Section 721.07, F.S.

For each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners' association.⁶ Section 721.13(3), F.S., sets forth the duties of the managing entity:

- Management and maintenance of all accommodations and facilities;
- Collection of assessments for common expenses;
- Providing each purchaser an itemized annual budget;
- Maintenance of all books and records concerning the timeshare plan;
- Arranging for an annual audit of the financial statements of the timeshare plan;
- Making available for inspection any books and records of the timeshare plan;
- Scheduling occupancy of the timeshare units;
- Performing any other functions and duties that are necessary and proper to maintain the accommodations and facilities;
- Entering into an ad valorem tax escrow agreement prior to the receipt of any ad valorem taxes; and
- Entering into contracts for any paid television programming service or bulk rate services agreement.

According to an economic impact report prepared by PricewaterhouseCoopers, Florida, with 378 timeshare resorts and approximately 47,400 timeshare units, attracts more timeshare travelers than any other state.⁷ In total, “the Florida timeshare industry supported an estimated \$14.3 billion of consumer and business spending, 161,000 full- and part-time jobs, \$5.4 billion in salaries, wages, and related income, and \$2.1 billion in tax revenues in 2005.”⁸

Foreclosures⁹

A foreclosure action is initiated when a borrower fails to make payments on his or her mortgage. Most mortgage lenders (mortgagees) wait until the borrower (mortgagor) has missed four payments before filing the complaint with the court. This practice is governed by what is known as a “deemer clause” in most mortgage contracts.

A mortgage lender must serve a complaint, a notice of *lis pendens*,¹⁰ and a summons on the borrower in order to initiate foreclosure proceedings. The complaint generally alleges that the plaintiff, as the holder of the note and mortgage, seeks to foreclose the mortgage held on a

⁶ Section 721.13(1)(a), F.S.

⁷ ARDA International Foundation, *Economic Impact of the Timeshare Industry on the Florida Economy* (2006 ed.).

⁸ *Id.*; see also Hotel Resource, *Florida Timeshare Industry Contributed \$14.3 Billion in 2005 to Statewide Economy* (Mar. 20, 2007), available at <http://www.hotelresource.com/pdf/dyn/26761.pdf> (last visited April 1, 2010).

⁹ The information found in this portion of the Present Situation of this bill analysis is from the Committee on Judiciary's interim project. See Comm. on Judiciary, The Florida Senate, *Tenants' Rights in Foreclosure Actions* (Interim Report 2010-124), available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-124ju.pdf (last visited April 1, 2010).

¹⁰ The definition of “lis pendens,” as appropriate for this analysis, is “[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome.” BLACK'S LAW DICTIONARY (8th ed. 2004). Essentially, “[t]he purpose of a notice of lis pendens is to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of real property is involved in litigation.” 35 Fla. Jur. 2d *Lis Pendens* s. 3 (2009).

particular piece of real property. The action is filed in the county where the real property is located. The complaint must be served on all parties to the action.

The Legislature created an optional “speedy” foreclosure procedure for residential foreclosures in 1993, codified at s. 702.10, F.S. This section provides a fast-track foreclosure process through an order to show cause, whereby a lender can obtain an *in rem* judgment.¹¹ Upon filing a foreclosure complaint, the mortgagee (typically a bank or other mortgage lender) can request an order to show cause for the entry of a final judgment. The judge must then read the complaint and verify that it states a cause of action. If the complaint is verified, the judge will issue an order to the defendant to show cause why a final judgment should not be entered. If a defendant waives the right to be heard, the judge shall promptly enter a final judgment of foreclosure. Upon the court’s entry of a final judgment, the procedures set out in s. 45.031, F.S., for a judicial sale should be followed.

In an uncontested foreclosure proceeding in which the mortgagee waives the right to recoup any deficiency judgment, the court is required to enter final judgment within 90 days from the date of the close of pleadings. A mortgage foreclosure proceeding is uncontested if an answer not contesting the foreclosure has been filed or a default judgment has been entered by the court.

Statistics compiled by the Office of the State Courts Administrator show that foreclosure filings in Florida have grown at an exponential rate over the last three years. The office reports 238,080 filings from January through September 10, 2009 (excluding Dixie County). This number is more than triple the amount of filings reported for the entire year in 2006. The number of foreclosures has “clogged the court system” and there have been several suggestions to ease the crisis. In 2009, several circuit courts instituted mandatory mediation for all foreclosure actions. At the end of that year, the Florida Supreme Court ordered that all 20 circuit courts establish such programs.¹²

Timeshare Foreclosures

Part III of ch. 721, F.S., provides for the foreclosure of liens on timeshare estates. An obligor¹³ may appoint a registered agent for service of process, and there are certain requirements for the assignment of the registered agent.¹⁴ The written statement of appointment must be signed by the obligor. According to representatives for the American Resort Development Association (ARDA), which represents timeshare developers, the lienholder in a timeshare interest foreclosure is usually the developer or the timeshare association.

Section 721.83(1), F.S., provides for the consolidation of foreclosure actions against timeshare estates. It permits a complaint in a foreclosure proceeding involving timeshare estates to join in

¹¹ A “judgment in rem” is “[a] judgment that determines the status or condition of property and that operates directly on the property itself.” BLACK’S LAW DICTIONARY (8th ed. 2004).

¹² Collins Ctr. for Public Policy, *Balancing Economic Interests and Fairness in Florida’s Residential Mortgage Foreclosure System* (April 2010) (on file with the Senate Committee on Judiciary).

¹³ Section 721.82(9), F.S., defines the term “obligor” to mean “the mortgagor, the person subject to an assessment lien, or the record owner of the timeshare estate.”

¹⁴ Section 721.84, F.S.

the same action multiple defendant obligors and junior interestholders of separate timeshare estates, provided that:

- The foreclosure proceeding involves a single timeshare property.
- The foreclosure proceeding is filed by a single plaintiff.
- The default and remedy provisions in the written instruments on which the foreclosure proceeding is based are substantially the same for each defendant.
- The nature of the defaults alleged is the same for each defendant.
- No more than 15 timeshare estates, without regard to the number of defendants, are joined within the same consolidated foreclosure action.

If a defendant in a consolidated foreclosure action timely raises any defense or counterclaim, the court must sever for a separate trial the part of the complaint in which the defense or counterclaim is raised.¹⁵ A consolidated timeshare foreclosure action is considered a single action, suit, or proceeding for the purpose of payment of filing fees and service charges pursuant to general law. An additional filing fee of up to \$10 for each timeshare estate joined in that action must be paid to the clerk of court.¹⁶

Section 721.85, F.S., sets forth requirements for the service of process in timeshare foreclosures proceedings. Service of process for a foreclosure proceeding involving a timeshare estate may be made by:

- Any means recognized by law; or
- Substituted service on a registered agent.

The current owner and the mortgagor of a timeshare estate are required to promptly notify the owners' association and the mortgagee of any change of address.¹⁷

Task Force on Residential Mortgage Foreclosure Cases¹⁸

This tremendous increase in mortgage foreclosure filings caused and continues to cause a strain on the courts. A Task Force on Residential Mortgage Foreclosure Cases was formed in March 2009 to recommend to the Supreme Court “policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties.”¹⁹ The Florida Supreme Court charged the task force with developing recommendations on alternative dispute resolution strategies, case management techniques, and approaches to providing pro bono or low-cost legal assistance to homeowners. The Court also directed the task force to examine existing court rules and propose any changes to the rules that

¹⁵ Section 721.83(2), F.S. Section 702.01, F.S., also requires the court to sever for separate trial all counterclaims against the foreclosing mortgagee.

¹⁶ Section 721.83(3), F.S.

¹⁷ Section 721.85(2), F.S.

¹⁸ The information found in this portion of the Present Situation of this bill analysis is from the Committee on Judiciary's interim project. See Comm. on Judiciary, *supra* note 9.

¹⁹ Florida Supreme Court Task Force on Residential Mortgage Foreclosure Cases, *Interim Report*, 3 (May 8, 2010) (on file with the Senate Committee on Judiciary).

would “facilitate early, equitable resolution of residential mortgage foreclosure cases.”²⁰

Although the focus of the task force was not on tenant issues directly, tenants may be affected by the recommendations of the task force to the extent the recommendations affect the resolution of foreclosure actions.

The recommendations were released on August 17, 2009. Noting the limited resources available, the task force recommended a uniform, statewide managed mediation program that is implemented through a model administrative order issued by the chief judge of each circuit. It will require that every foreclosure case that involves residential homestead property be referred to mediation unless the plaintiff and borrower agree otherwise or unless a pre-suit mediation was conducted. Some of the features of the administrative order include referral of the borrower to foreclosure counseling prior to mediation, early exchange of borrower and lender information, and the ability of the plaintiff’s representative to appear by telephone and borrowers will not be charged a fee.

The task force also recommended processing the foreclosure cases by three distinct categories:

- (1) homestead properties that are referred to mediation and are likely to resolve through the managed mediation program;
- (2) vacant and abandoned properties that can move through the courts quickly through expedited foreclosure processes;
- and (3) other foreclosure cases, which may include tenant-occupied or non-borrower-occupied properties, in which the borrower has been unable to communicate with the plaintiff to resolve the case, and which may be referred to the managed mediation program at equal cost to both parties.²¹

The task force also recommended changes to the Rules of Civil Procedure along with the forms to use with the rules for those cases that will not be resolved through the mediation program.

III. Effect of Proposed Changes:

Nonjudicial Process for Foreclosure of Liens on Timeshare Interests (Sections 1-8)

The bill creates a trustee foreclosure process for the foreclosure of assessment and mortgage liens on timeshare interests.

The bill amends s. 721.07(5), F.S., which requires a notice to be included in every public offering statement for a timeshare plan that is not a multisite timeshare. The notice must be in conspicuous type and advises the prospective purchaser of his or her rights and obligations with respect to payment of assessments, and the trustee procedure for the nonjudicial foreclosure of liens. Specifically, the notice reads:

The managing entity has a lien against each timeshare interest to secure the payment of assessments, ad valorem assessments, tax assessments, and special assessments. Your failure to make any required payments may result in the

²⁰ *Id.*

²¹ Florida Supreme Court Task Force on Residential Mortgage Foreclosure Cases, *Final Report and Recommendations on Residential Mortgage Foreclosure Cases*, 8 (August 17, 2009) (one file with the Senate Committee on Judiciary).

judicial or trustee foreclosure of an assessment lien and the loss of your timeshare interest. If the managing entity initiates a trustee foreclosure procedure, you shall have the option to object to the use of the trustee foreclosure procedure and the managing entity may only proceed by filing a judicial foreclosure action.

Section 721.13, F.S., is amended to add the requirement that an officer, director, or agent of an owners' association must discharge his or her duties in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonable believes to be in the interests of the owners' association. An officer, director, or agent of an owners' association is exempt from liability unless the person breached or failed to perform his or her duties and such breach or failure constitutes:

- A violation of criminal law;
- A transaction from which the officer or director derived an improper personal benefit, directly or indirectly; or
- Recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The bill amends s. 721.16(2), F.S., to provide that, as an alternative to initiating a judicial action for failure to pay assessments, the managing entity may initiate a trustee procedure to foreclose an assessment lien. It also amends subsection (3) of s. 721.16, F.S., to revise a cross-reference to s. 718.116(5), F.S., relating to liens on condominium parcels to secure payment of assessments.

Currently, part III of ch. 721, F.S., is titled "Foreclosure of Liens on Timeshare Estates." The bill requests that the Division of Statutory Revision rename this part to "Foreclosure of Liens on Timeshare Interests."

Section 721.81, F.S., which provides the legislative purpose of part III of ch. 721, F.S., is amended by the bill to add the legislative finding that nearly all timeshare interest foreclosures are uncontested. The bill also provides that it is the legislative intent to protect the ability of consumers who own a timeshare interest to choose a judicial proceeding for the foreclosure of an assessment or mortgage lien on their timeshare interest. Additionally, the trustee foreclosure procedures created by the bill are to have the same force and effect as the use of a judicial foreclosure procedure; however, an obligor is not to be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amount the obligor owes.

The bill creates and amends several definitions in s. 721.82, F.S. First, the bill defines the term "amounts secured by the lien" to mean all past due amounts, accrued interest, late fees, taxes, advances for the payment of taxes, insurance and maintenance of the timeshare interest, and any fees or costs incurred by the lien holder or trustee, including any reasonable attorney's fees, trustee's fees, and costs included in connection with the default.

The bill also adds the definition of "permitted delivery service" and "trustee." Permitted delivery service is defined to mean "any nationally recognized common carrier delivery service or international airmail service that allows for return receipt service." The bill specifies that a trustee must be independent and defines a "trustee" as:

- An attorney in good standing with The Florida Bar and who has been practicing law for at least five years, or that attorney's law firm,
- A title insurer authorized to transact business in Florida for at least five years, or
- A receiver appointed under s. 721.26, F.S., but only in cases for foreclosure of assessment liens.

The bill amends the definition of the term "assessment lien" to reference liens for unpaid ad valorem assessments and tax assessments, and it replaces the term "timeshare estate" with "timeshare interest" throughout s. 721.82, F.S.

Finally, the bill amends s. 721.85, F.S., which relates to the service of process in timeshare foreclosure proceedings, to provide that service may be made by certified mail, registered mail, or a permitted delivery service, return receipt requested. Additionally, the bill provides that substituted notice under ss. 721.855 or 721.856, F.S., may be made on any party who has been appointed a registered agent at the registered office.

The bill also makes technical and conforming changes.

Procedure for the Trustee Foreclosure of Assessment Liens (Section 9)

The bill creates s. 721.855, F.S., to provide a process for the nonjudicial foreclosure of assessment liens by use of a trustee foreclosure procedure.

Appointment of Trustees

A lienholder may appoint a trustee (or substitute trustee) by recording a notice of appointment in the official records of the county or counties in which the timeshare interest is located. The recorded notice must contain the name and address of the trustee, the name and address of the lienholder, and the name and address of the timeshare plan. A lienholder may appoint multiple trustees in a single appointment, and any appointed trustee may be used by a lienholder in the trustee foreclosure process.

The bill provides that a trustee shall use good faith, skill, care, and diligence in discharging all of the trustee's duties and shall deal honestly and fairly with all parties.

Initiation of a Trustee Foreclosure

If a timeshare instrument contains a provision that prevents the use of a trustee foreclosure procedure, or if the managing entity determines that the timeshare instrument should be amended to specifically provide for the trustee foreclosure procedure, an amendment to the timeshare instrument must be adopted and recorded prior to using the trustee foreclosure procedure. The amendment to the timeshare instrument may be adopted by a majority of those present and voting at a duly called meeting of the owners' association at which at least 15 percent of the voting interest are present in person or by proxy. The amendment must contain a statement in substantially the following form:

If a timeshare owner fails to make timely payments of timeshare plan common expenses, ad valorem taxes, or special assessments, an assessment lien against the timeshare owner's timeshare interest may be foreclosed in accordance with a judicial foreclosure procedure or a trustee foreclosure procedure, either of which may result in the loss of the timeshare owner's timeshare interest. If the managing entity initiates a trustee foreclosure procedure, the timeshare owner may object pursuant to state law, and, in such event, the managing entity may proceed only by filing a judicial foreclosure action.

Before the trustee foreclosure proceeding is initiated:

- The managing entity must, by written notice, inform the owners of the timeshare interests that the managing entity has the right to elect the trustee foreclosure process;
- A claim of lien against the timeshare interest must be recorded, and the notice of intent to file a lien shall be given for timeshare condominiums and timeshare cooperatives; and
- The lienholder must deliver an affidavit to the trustee that identifies:
 - The obligor and obligor's notice address;
 - The timeshare interest;
 - The date that the notice of intent to file a lien was given;
 - The official records book and page number where the claim is recorded;
 - The name and notice address of any junior interestholder, as identified by a title search of the timeshare interest;
 - The facts that establish that the obligor has defaulted in the obligation to make a payment; and
 - The amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

The written notice informing the owners of the timeshare interests that a trustee foreclosure process can be used may be provided by mailing the notice to each owner's notice address, in the notice of an annual or special meeting of the owners, by posting the notice on the website of the applicable timeshare plan, or by any owner communication used by the managing entity.

Obligor's Rights

The bill provides that an obligor has the right to object to the use of the trustee foreclosure procedure. The objection may be made at any time before the sale of the timeshare interest in a public auction. The objection must be in writing and delivered to the trustee. If an objection is received, the trustee may not proceed with the trustee foreclosure proceeding.

At any time before the trustee issues the certificate of sale, the obligor may cure the default and redeem the timeshare interest by paying to the trustee the amounts secured by the lien in cash or in certified funds. The obligor does not have a right of redemption after the trustee issues a certificate of sale.

Conditions of the Trustee's Power to Sell

The bill provides the conditions to the trustee's power to sell a timeshare interest that has been foreclosed through the nonjudicial process. The trustee may only sell the timeshare interest if:

- The trustee has received a lienholder's affidavit;
- No written objection to the trustee foreclosure procedure has been received by the trustee, and the timeshare interest has not been redeemed;
- There is no lis pendens recorded and pending, and no injunctive action has been filed;
- The trustee has provided written notice of default and intent to sell and at least 30 calendar days have elapsed after such notice is deemed perfected; and
- The notice of sale required has been recorded in the public records of the county or counties in which the timeshare interest is located.

Notice of Default and Intent to Foreclose

In the trustee foreclosure proceeding, the trustee is required to send the obligor a written notice of default and intent to sell to the notice address of the obligor. The notice must be sent certified mail, registered mail, or by a permitted delivery service,²² return receipt requested and by first-class mail or permitted delivery service, postage paid. Unless otherwise specified in this bill analysis, all of the required mailings in the bill are required to be made by return receipt requested.

The notice must include specific identifying information (e.g., legal description of the timeshare interest, nature of the default, and the amounts secured by the lien), including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default, and a form for the obligor to object to the trustee foreclosure. The notice must also be mailed to any junior interestholder, but without the objection form.

The notice of default and intent to foreclose must include a form notice that notifies the obligor that he or she risks losing the timeshare interest in the trustee foreclosure proceeding. It also advises the obligor that, if he or she does not object to the use of the trustee foreclosure procedure, he or she will not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien.

Notice is deemed perfected when the trustee receives the return receipt bearing the signature of the obligor or junior interestholder. The notice is not deemed perfected if the notice is returned as undeliverable, a signed return receipt is received but the trustee cannot ascertain that the obligor or junior interestholder is the person who signed the return receipt, or the notice is returned or refused within 30 days after the notice is mailed.

The bill provides that if the notice is returned as undeliverable, the trustee must perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder and mail a second notice to the new address or addresses.

²² Permitted delivery service is defined by the bill as "any nationally recognized common carrier delivery service or international airmail service that allows for return receipt service."

If the notice is not perfected, the trustee may perfect notice against the obligor by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice must appear at least once a week for two consecutive weeks, and it may be grouped with an unlimited number of notices in the same publication, provided that all of the notices pertain to the same timeshare plan. The publication notice is considered perfected when it is published.

The bill requires the trustee to execute an affidavit regarding the manner in which the notice was perfected and attach the affidavit to the certificate of compliance.²³ The affidavit must set forth the manner in which the notice was perfected, the nature of the notice, the date the notice was mailed, the manner in which the notice was mailed, and the basis for that knowledge.

If the notice was made by publication, the affidavit must also state that the notice was perfected by publication after a diligent search and inquiry, as well as other statutory information.²⁴ No other action is necessary to perfect notice.

Notice of Sale

The bill requires the notice of sale to include certain information, such as:

- The name and notice address of the obligor and any junior interestholder;
- The legal description of the timeshare interest;
- The name and address of the trustee;
- A description of the default that is the basis for the foreclosure;
- The official records book and page numbers where the claim of lien is recorded;
- The amounts secured by the lien;
- The date, location, and starting time of the sale; and
- The right of and the method by which the obligor may cure the default or redeem the interest.

The bill requires the trustee to mail a copy of the notice of sale within three days from the date it is submitted for recording, by first-class mail or permitted delivery service, postage prepaid, to the notice addresses of the obligor and any junior interestholder. After the recording of the notice of sale, no other notice is required to be given to any person claiming an interest in the timeshare interest. The recording of the notice of sale has the same force and effect as the filing of a *lis pendens* in a judicial proceeding under s. 48.23, F.S. The notice of sale must be published in a newspaper of general circulation in the county or counties where the timeshare interest is located for at least once a week for two consecutive weeks. The last publication must be five days before the sale.

²³ A certificate of compliance is required under s. 721.855(9), F.S.

²⁴ The affidavit must set for the information required by ss. 49.041 or 49.051, F.S., depending on whether the obligor is a natural person or corporation.

Manner of Sale

Section 721.855(7), F.S., provides requirements for the sale of the timeshare interest in a public auction, which must be held in the county in which the timeshare interest is located. The sale must occur within 30 days of the recording of the notice of sale and between the hours of 9:00 a.m. and 4:00 p.m. The sale may occur through the Internet at a specific website. Before the sale is conducted, a junior interestholder with a dispute regarding any matter may pursue adjudication by a court, by an interpleader action, or otherwise.

The trustee must conduct the sale and act as the auctioneer. It is not clear whether the trustee must be licensed under part VI of ch. 468, F.S., as an auctioneer. However, s. 468.383, F.S., provides exemptions from the auctioneer act for auctions conducted by the owner, or the owner's attorney, of any part of the property being offered, unless the owner acquired the goods to resell,²⁵ the auctions are conducted under a judicial or an administrative order, the sale is required by law to be at auction,²⁶ or the auctions are conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property.²⁷ These exemptions may qualify the trustee to serve as an auctioneer.

The lienholder may bid at the sale. Written bidding instructions may be sent by the lienholder to the trustee for the sale. The highest bidder must pay the trustee the bid price in cash or certified funds on the day of the sale. If the lienholder is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale. On the day of the sale, and after receipt of the sale funds from the highest bidder, the trustee must issue a certificate of sale to the highest bidder. The trustee must mail a copy of the certificate of sale to the obligor and any junior interestholders.

The trustee may postpone the sale if notice of the postponement is given at the date, time, and location contained in the notice of sale. The notice of sale for the postponed sale must be mailed, recorded, and published. The effective date of the initial notice of sale is not affected by a postponed sale.

Effect of the Trustee's Sale

A trustee's sale forecloses and terminates all interests of the obligor, any junior interestholders, and any other person claiming by, through, or under any such person, in the affected timeshare interest.

The validity of the sale as to the interests of any person properly notified is not affected due to a failure to give notice to any person entitled to notice. If a person who is entitled to notice was not given notice, the person has the rights of a person not made a defendant in a judicial foreclosure. In a judicial foreclosure proceeding, a person who has not been provided notice has the right to file an action to be included in the proceeding. According to a representative for the American

²⁵ Section 468.383(1), F.S.

²⁶ Section 468.383(2), F.S.

²⁷ Section 468.383(5), F.S.

Resort Development Association (ARDA), this would typically be a junior interestholder and is extremely rare because the lienholder is typically only the association or the developer.

The bill provides that all rights of redemption that have been foreclosed under this section terminate when the certificate of sale is issued. The sale releases the obligor's liability for all amounts secured by the lien. After the sale of the obligor's timeshare interest, the lienholder has no right to any deficiency judgment against the obligor.

Third parties without actual knowledge of irregularities in the sale may rely upon the validity of the issuance and recording of the trustee's deed. The bill provides that, if there is an irregularity in the foreclosure proceedings, a purchaser assumes the rights of the lienholder (i.e., becomes subrogated to all the rights of the lienholder), to the extent necessary to foreclose the assessment lien in order to correct the irregularity. The purchaser may file a new foreclosure action to foreclose on the assessment lien. Any subsequent foreclosure that is required to correct an irregularity may be conducted under s. 721.855, F.S.

Trustee's Certificate of Compliance

The bill sets forth the requirements for the trustee's certificate of compliance, which the trustee must execute within 10 days of the sale of the timeshare interest. The certificate of compliance shall:

- Confirm delivery of the notice of default and intent to foreclose and attach the affidavit setting forth the manner in which the notice was perfected;
- State that the default was not cured, that the trustee did not receive any written objection, and that the timeshare interest was not redeemed;
- Confirm that that notice of sale was published and attach an affidavit of publication for the notice of sale; and
- Confirm that the notice of sale was mailed and include a list of the parties to whom the notice of sale was mailed.

The trustee is entitled to rely upon an affidavit or certification from the lienholder for the facts and circumstances of default and failure to cure the default.

Trustee's Deed

The bill sets forth the requirements for the trustee's deed, which conveys to the highest bidder all of the rights, title, and interest in the timeshare interest that the former owner had, or had the power to convey. The trustee's deed does not contain any warranties of title from the trustee. The trustee is required to issue the trustee's deed within 10 calendar days of the sale if no injunctive action has been served on the trustee. The trustee's deed must be recorded in the official records of the county or counties where the timeshare interest is located, and the trustee's certificate of compliance must be attached as an exhibit to the trustee's deed.

The certificate of compliance and trustee's deed together are presumptive evidence of the truth of the matters set forth in them. The sale may not be set aside or voided against any person acquiring the timeshare interest, including any subsequent mortgagee or buyer. The issuance and

recording of the trustee's deed has the same force and effect as the issuance and recording of a certificate of title by the clerk of the court in a judicial foreclosure action.

Disposition of Proceeds of Sale

The bill provides that the proceeds of the sale are to be applied as follows:

- To the expenses of the sale, including compensation of the trustee.
- To the amount owed and set forth in the notice.
- If there are junior interestholders, the trustee may file an action in interpleader, pay the surplus to the court, and ask the court to determine the proper distribution.
- To the former owner or, if the former owner cannot be found after one year, to the Chief Financial Officer pursuant to ch. 717, F.S.²⁸

Trustee Foreclosure Actions

The bill clarifies that the lienholder may proceed with a judicial foreclosure action in lieu of the trustee procedures established by the bill.

Application

The trustee foreclosure procedure applies to any default that gives rise to an assessment lien after the effective date of the bill.

Actions for Failure to Follow the Trustee Foreclosure Procedure

The bill provides that an obligor may bring an action against the lienholder for actual damages for a material violation of s. 721.855, F.S.

Trustee Foreclosure of Mortgage Liens (Section 10)

The bill creates s. 721.856, F.S., to provide procedures for trustee foreclosures of mortgage liens. The procedures are substantially similar to the procedures for the nonjudicial, trustee foreclosure of assessment liens in s. 721.855, F.S., except that the trustee process is limited to a prospective application. It can only be used if the mortgage, or an amendment to a mortgage, executed by the obligor before the effective date of the bill contains a statement in substantially the following form:

If the mortgagor fails to make timely payments under the obligation secured by this mortgage, or is otherwise deemed in uncured default of this mortgage, the lien against the mortgagor's timeshare interest created by this mortgage may be foreclosed in accordance with either a judicial foreclosure procedure or a trustee foreclosure procedure and may result in the loss of your timeshare interest. If the mortgagee initiates a trustee foreclosure procedure, the mortgagor shall have the

²⁸ Chapter 717, F.S., relates to the disposition of unclaimed property by the Chief Financial Officer.

option to object and the mortgagee may proceed only by filing a judicial foreclosure action.

In effect, the trustee foreclosure process permits the mortgagee to expedite the foreclosure process because the mortgagee would not have to serve a complaint for foreclosure and a summons on the borrower in order to initiate the foreclosure proceedings.

The bill also includes two additional provisions that must be included in the affidavit from the lienholder to the trustee prior to initiating a trustee foreclosure procedure. In addition to the requirements listed under the trustee foreclosure procedure for assessment liens, the affidavit must state:

- That the appropriate amount of documentary stamp tax and intangible taxes has been paid upon recording the mortgage, or otherwise paid to the state; and
- That the lienholder is the holder of the note, and has complied with all preconditions in the note and mortgage to determine the amounts secured by the lien and to initiate the use of the trustee foreclosure procedure.

Conflict of Laws (Section 11)

The bill amends s. 721.86, F.S., to provide that the provisions of part III of ch. 721, F.S., shall prevail in the event of a conflict between this part and the other provisions of chs. 721 and 702, F.S.,²⁹ or other applicable law.

Managing Entities (Section 12)

The bill amends s. 721.20(2), F.S., to provide that a real estate broker's, sales associates, or appraiser's license under ch. 475, F.S., is not required for persons who solicit prospective purchasers of a timeshare plan and any purchaser who refers no more than 20 people to a managing entity per year or who otherwise provides testimonials on behalf of a managing entity. Current law limits the license exemption to referrals to a developer and testimonials on behalf of a developer.

Effective Date (Section 13)

The bill would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁹ Chapter 702, F.S., relates to the foreclosure of mortgages, agreements for deeds, and statutory liens.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill creates a nonjudicial process for the foreclosure of liens on timeshare interests. Some people have argued that the “power of sale” (i.e., nonjudicial foreclosure) violates procedural due process under the Fourteenth Amendment of the United States Constitution and the due process clause of the Florida Constitution³⁰ because of the limited notice procedures and the lack of an opportunity to be heard.³¹ The Florida Supreme Court has said that “[a] landowner whose property is to be sold for delinquent taxes undoubtedly has a vested ownership interest in the subject property and is therefore entitled to notice of a pending tax deed sale.”³²

However, state action is a constitutional prerequisite to a due process violation.³³ With respect to nonjudicial foreclosure provisions in private contracts, the Florida Supreme Court has upheld the constitutionality of them and said that these laws are “no more than a codification or restatement of a common law right and a contract right recognized long before the promulgation thereof and creates no new rights.”³⁴ Because a deed of trust is usually executed between two private parties (for example, the owner of a timeshare interest and the lienholder, which is usually a financial institution) there may not be a due process concern. The Missouri Supreme Court upheld Missouri’s power of sale statute³⁵ and found that state action is not implicated “because the power of sale is a contractual right established between the parties by the deed of trust held on the land.”³⁶ The Missouri Supreme Court also found that state action was not implicated when the foreclosing entity was an entity of the federal government.³⁷

In Florida, the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation has no authority to enforce or regulate foreclosures; therefore, it appears that there is no state action.³⁸ However, even if state action was found, the test of constitutionality is whether the law “bears a reasonable relation to a permissible legislative objective and is not discriminatory, arbitrary or oppressive.”³⁹ The bill may pass constitutional muster because its application is to all timeshare interest holders, and the bill provides multiple

³⁰ FLA. CONST. art. I, s. 9.

³¹ See Daniel E. Blegen, *The Constitutionality of Power of Sale Foreclosures by Federal Government Entities*, 62 MO. L. REV. 425, 431 (Spring 1997).

³² *Vosilla v. Rosado*, 944 So. 2d 289, 294 (Fla. 2006).

³³ Blegen, *supra* note 31, at 431.

³⁴ *Northside Motors of Fla., Inc. v. Brinkley*, 282 So. 2d 617, 622 (Fla. 1973).

³⁵ Missouri’s power of sale statute provides that a trustee may foreclose and sell the property pursuant to a valid power of sale provision in the mortgage or deed of trust, and does not require any hearing or other determination of the rights of the parties. See Mo. Rev. Stat. s. 443.290.

³⁶ Blegen, *supra* note 31, at 431; see also *Federal Nat’l Mortgage Ass’n v. Howlett*, 521 S.W.2d 428 (Mo. 1975).

³⁷ See *Federal Nat’l Mortgage Ass’n v. Scott*, 548 S.W.2d 545 (Mo. 1977).

³⁸ Dep’t of Business and Professional Regulation, *Office of Legislative Affairs, 2010 Legislative Analysis Form, SB 2358* (Mar. 2, 2010) (on file with the Senate Committee on Judiciary).

³⁹ *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 15 (Fla. 1974).

notice provisions, along with an owner's right to opt for a judicial foreclosure procedure.⁴⁰

Additionally, Article I, section 21 of the Florida Constitution provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.” The test for assuring the right of access to the courts was established in *Kluger v. White*, in which the Florida Supreme Court held that:

Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.⁴¹

Because the bill provides an officer, director, or agent of an owners' association with immunity from liability as long as the person doesn't violate a criminal law, conduct a transaction from which the officer or director derived an improper personal benefit, or act recklessly or in bad faith, it raises questions about possible infringements on the right of access to the courts. A person injured by an officer, director, or agent of an owners' association may argue that the limitation denies the person of his or her access to courts. To the extent that such a tort action may be pursued under Florida law, the immunity provision would have to meet the constitutional test established in *Kluger v. White*. The Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity. This provision will likely withstand a constitutional challenge, especially considering there is a similar provision is found in s. 617.0834, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill would permit the managing entities of timeshare owners' associations and mortgagees to simplify and expedite the foreclosure process for assessment liens and mortgage liens through a nonjudicial proceeding. Managing entities and mortgagees who use the more expedited nonjudicial process may experience reduced legal and administrative costs relative to the judicial process.

⁴⁰ Dep't of Business and Professional Regulation, *supra* note 38.

⁴¹ *Kluger v. White*, 281 So. 2d 1, 4 (1973).

C. Government Sector Impact:

According to the Office of the State Courts Administrator (OSCA), approximately 317,747 mortgage foreclosure cases (all types, not just timeshare mortgage foreclosures) are expected to come through the court system in Fiscal Year 2010-2011. These cases have the possibility of generating \$321.7 million in revenue for the General Revenue Fund, the State Courts Revenue Trust Fund, and the Clerk of the Court Trust Fund.⁴² The Revenue Estimating Conference (conference) met on April 5, 2010, to consider the fiscal impact of this bill on timeshare foreclosures. The conference concluded that the bill will have an insignificant impact on general revenue and a recurring negative state trust fund impact in the amount of \$300,000.⁴³

Although it is unknown how many foreclosures on timeshare interests will be done through the nonjudicial process, the bill may reduce judicial workload.⁴⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 7, 2010:

The committee substitute:

- Provides immunity from liability for monetary damages to an officer, director, or agent of an owners' association, unless the officer, director, or agent breaches or fails to perform his or her duties and such breach constitutes a violation of criminal law, a transaction from which the officer or director derived an improper personal benefit, or recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property;

⁴² Office of the State Courts Adm'r, *Judicial Impact Statement HB 1411 (SB 2358 – identical)* (Mar. 5, 2010) (on file with the Senate Committee on Judiciary).

⁴³ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference, Impact Conference Results* (Apr. 5, 2010), available at <http://edr.state.fl.us/conferences/revenueimpact/Impact2010.pdf> (last visited Apr. 6, 2010).

⁴⁴ Office of the State Courts Adm'r, *supra* note 42; *see also* Dep't of Business and Professional Regulation, *supra* note 38.

- Requests that the Division of Statutory Revision rename part III of ch. 721, F.S., as “Foreclosure of Liens on Timeshare Interests”;
- Clarifies in the definition of “trustee” that an attorney or title insurer must have been practicing law for at least five years or transacting business in this state for at least five years;
- Requires a trustee to use good faith, skill, care, and diligence in discharging his or her duties and to deal honestly and fairly with all parties;
- Provides that if a timeshare instrument contains a provision specifically preventing the use of a trustee foreclosure procedure, or if the managing entity determines that the timeshare instrument should be amended to specifically provide for the use of the trustee foreclosure procedure, an amendment to the timeshare instrument must be adopted and recorded prior to the use of the trustee foreclosure procedure;
- Prescribes language to be included in the amendment to the timeshare instrument, which must be adopted by a majority of those present and voting at a duly called meeting of the owners’ association at which at least 15 percent of the voting interest are present in person or by proxy;
- Specifies that the trustee must issue a certificate of sale to the highest bidder on the date of the sale and upon receipt of the cash or certified funds due from the highest bidder;
- Removes language that provided that a timeshare instrument does not need to be amended to permit the managing entity of the timeshare plan to use the trustee foreclosure process of an assessment lien; and
- Requires the affidavit from the lienholder to the trustee (prior to initiating the trustee foreclosure process for a mortgage lien) to include information about the amount of documentary stamp tax and intangible taxes paid upon the mortgage and to state that the lienholder is the holder of the note and has complied with all preconditions in the note or mortgage to determine the amounts secured by the lien.

CS by Regulated Industries on March 24, 2010:

The committee substitute (CS) replaces all references to the term “nonjudicial” with the term “trustee,” e.g., “trustee procedure” and “trustee foreclosure” instead of “nonjudicial procedure” and “nonjudicial foreclosure.” It also replaces all references to “public records” with “official records.”

The CS amends the notice in s. 721.07(5)(jj), F.S., to reference “ad valorem assessments” and “tax assessments” instead of “ad valorem taxes.”

The CS amends subsection (3) of s. 721.16, F.S., to correct a cross-reference and conform terminology.

The CS amends s. 721.82(2)(b), F.S., relating to the definition of the term “assessment lien” to reference liens, unpaid ad valorem assessments, and tax assessments instead of taxes.

The CS modifies the definition of the term “permitted delivery service” in s. 721.82(11), F.S., to provide that the service “allows for signed return receipt service” instead of the service “requiring a signed return receipt.” It amends s. 721.85(1)(a), F.S., to reference “certified mail or registered mail” instead of “certified and registered mail, return receipt requested.” It requires that the first class mail or permitted delivery service must be with postage prepaid.

Trustee Procedure for Assessment Liens - Regarding the trustee procedure for the foreclosure of assessment liens, the CS:

- Amends s. 721.855(2)(b)1., F.S., to provide that the effective date of the title search, not the title search, must be within 60 calendar days before the date of the affidavit;
- Section 721.855(3)(b), F.S., does not provide that, if the obligor delivers the written objection more than 30 calendar days after the notice of default and intent to sell is deemed perfected under subsection (5) of s. 721.855, F.S., the lienholder has the right to collect from the obligor in a judicial foreclosure procedure all of the costs incurred in the nonjudicial foreclosure procedure. It provides that, before the trustee issues the certificate of sale, the obligor may cure the default and redeem the timeshare interest by paying to the trustee the amounts secured by the lien in cash or in certified funds. It also provides that the obligor does not have a right of redemption after the trustee issues the certificate of sale;
- Amends subsection (4) of s. 721.855, F.S., to include, as a condition to the trustee’s power of sale, that the timeshare interest has not been redeemed;
- Amends subsection (5) of s. 721.855, F.S., to rename the Notice of Default and Intent to Sell to the Notice of Default and Intent to Foreclose;
- Amends s. 721.855(5)(a), F.S., to reference “certified mail or registered mail” instead of “certified and registered mail, return receipt requested.” It requires that the first class mail or permitted delivery service must be with postage prepaid;
- Amends s. 721.855(5)(a)1., F.S., to require that the Notice of Default and Intent to Foreclose must state the period of time after the date of the Notice of Default and Intent to Foreclose within which the obligor may cure the default;
- Amends the notice in s. 721.855(5)(a)3., F.S., to provide that, if the obligor does not object to the use of the trustee foreclosure procedure, he or she will not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien. It deletes the notice that an objection may subject the obligor to a deficiency judgment;
- Amends subparagraph (a)5. and paragraphs (b) and (c) of s. 721.855(5), F.S., to provide that, if the notice is returned as undeliverable, the trustee must perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder, and the trustee must mail a second notice to the new address or addresses. It does not require the mailing of a second Notice of Default and Intent to Foreclose, if the notice is received within 30 days after it is mailed and the trustee cannot identify the signature. It provides for an affidavit to the certificate of compliance for a notice perfected under s. 721.855(5)(b)1., F.S., relating to the trustee’s diligent search and inquiry to obtain a different address for the obligor or

- junior interestholder. It deletes the requirement that the signed return receipt must be attached to the certificate of compliance;
- Amends s. 721.855(6)(b), F.S., to require that the trustee mail a copy of the notice of sale within 3 days from the date it is submitted for recording instead of on the date it is submitted for recording. It also provides for the use of a permitted delivery service for mailing the notice of sale;
 - Moves the requirements for the trustee's certificate of compliance from subsection (7) to subsection (9) of s. 721.855, F.S., and renumbers the subsequent subsections;
 - Creates paragraph (g) of s. 721.855(7), F.S., to provide that, before the sale is conducted, a junior interestholder with a dispute regarding any matter may pursue adjudication by a court, by interpleader action, or otherwise;
 - Does not provide in s. 721.855(8), F.S., relating to the effect of the trustee's sale, that a lienholder may correct the failure to meet the requirements of s. 721.855, F.S., through a subsequent foreclosure of a timeshare interest;
 - Deletes the provision that the sale extinguishes the assessment lien in s. 721.855(8)(c), F.S.;
 - Amends s. 721.855(8)(d), F.S., to provide that a purchaser has the right to become subrogated to all the rights of the lienholder in order to correct irregularities in the foreclosure by subsequent reforeclosure;
 - Amends s. 721.855(9), F.S., relating to the trustee's certificate of compliance, to require the trustee to execute the certificate within 10 days of the sale of the timeshare interest instead of within three days. It also deletes the requirement that the certificate of compliance must be recorded in the public records of the county in which the timeshare interest is located; and
 - Amends s. 721.855(10), F.S., to require that the trustee's certificate of compliance must be attached to the trustee's deed.

Trustee Procedure for Mortgage Liens - Regarding the trustee procedure for the foreclosure of mortgage liens in s. 721.856, F.S., the CS:

- Amends s. 721.856(2)(b)1., F.S., to provide that the effective date of the title search, not the title search, must be within 60 calendar days before the date of the affidavit.
- Section 721.856(3)(b), F.S., does not provide that , if the obligor delivers the written objection more than 30 calendar days after the notice of default and intent to sell is deemed perfected under subsection (5) of s. 721.856, F.S., the lienholder has the right to collect from the obligor in a judicial foreclosure procedure all of the costs incurred in the nonjudicial foreclosure procedure. It provides that, before the trustee issues the certificate of sale, the obligor may cure the default and redeem the timeshare interest by paying to the trustee the amounts secured by the lien in cash or in certified funds. It also provides that the obligor does not have a right of redemption after the trustee issues the certificate of sale.
- Amends subsection (4) of s. 721.856, F.S., to include, as a condition to the trustee's power of sale, that the timeshare interest has not been redeemed.
- Amends subsection (5) of s. 721.856, F.S., to rename the Notice of Default and Intent to Sell to the Notice of Default and Intent to Foreclose.

- Amends s. 721.856(5)(a), F.S., to reference “certified mail or registered mail” instead of “certified and registered mail, return receipt requested.” It requires that the first class mail or permitted delivery service must be with postage prepaid.
- Amends s. 721.856(5)(a)1., F.S., to require that the Notice of Default and Intent to Foreclose must state the period of time after the date of the Notice of Default and Intent to Foreclose within which the obligor may cure the default.
- Amends the notice in s. 721.856(5)(a)3., F.S., to provide that, if the obligor does not object to the use of the trustee foreclosure procedure, he or she will not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien. It deletes the notice that an objection may subject the obligor to a deficiency judgment.
- Amends subparagraph (a)5. and paragraphs (b) and (c) of s. 721.856(5), F.S., to provide that, if the notice is returned as undeliverable, the trustee must perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder, and the trustee must mail a second notice to the new address or addresses. It does not require the mailing of a second notice of default and intent to foreclose, if the notice is received within 30 days after it is mailed and the trustee cannot identify the signature. It provides for an affidavit to the certificate of compliance for a notice perfected under s. 721.856(5)(b)1., F.S., relating to the trustee’s diligent search and inquiry to obtain a different address for the obligor or junior interestholder. It deletes the requirement that the signed return receipt must be attached to the certificate of compliance.
- Amends s. 721.856(6)(b), F.S., to require the trustee to mail a copy of the notice of sale within 3 days from the date it is submitted for recording instead of on the date it is submitted for recording. It also provides for the use of a permitted delivery service for mailing the notice of sale.
- Moves the requirements for the trustee’s certificate of compliance from subsection (7) to subsection (9) of s. 721.856, F.S., and renumbers the subsequent subsections.
- Creates paragraph (g) of s. 721.856(7), F.S., to provide that, before the sale is conducted, a junior interestholder with a dispute regarding any matter may pursue adjudication by a court, by interpleader action, or otherwise.
- Does not provide in s. 721.856(8), F.S., relating to the effect of the trustee’s sale, that a lienholder may correct the failure to meet the requirements of s. 721.856, F.S., through a subsequent foreclosure of a timeshare interest.
- Deletes the provision that the sale extinguishes the mortgage lien in s. 721.856(8)(c), F.S.
- Amends s. 721.856(8)(d), F.S., to provide that a purchaser has the right to become subrogated to all the rights of the lienholder in order to correct irregularities in the foreclosure by subsequent reforeclosure.
- Amends s. 721.856(9), F.S., relating to the trustee’s certificate of compliance, to require the trustee to execute the certificate within 10 days of the sale of the timeshare interest instead of within 3 days. It also deletes the requirement that the certificate of compliance must be recorded in the public records of the county in which the timeshare interest is located.
- Amends s. 721.856(10), F.S., to require that the trustee’s certificate of compliance must be attached to the trustee’s deed.

Miscellaneous Provisions - The CS does not amend s. 721.86(1), F.S., to delete the current provision that the procedures in part III of ch. 721, F.S., must be given effect in the context of any foreclosure proceedings against timeshare estates governed by chs. 702, 718, 719, or 721, F.S.

The CS amends subsection (4) of s. 721.86, F.S., to exempt assessment liens as provided in s. 721.855(13), F.S.

The CS amends subsection (2) of s. 721.20, F.S., to apply the real estate license exemption to include referrals to a managing entity and testimonials on behalf of a managing entity.

B. Amendments:

None.